

AMENDED IN SENATE JUNE 11, 1998
AMENDED IN ASSEMBLY MAY 19, 1998
AMENDED IN ASSEMBLY APRIL 28, 1998
AMENDED IN ASSEMBLY MARCH 26, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2721

Introduced by Assembly Member Miller

February 23, 1998

An act to ~~add Section 731 to~~ amend Section 4955 of, and to add Sections 731, 4950, 4950.1, 4950.2, 4950.3, and 4950.4 to, the Business and Professions Code, relating to consumer affairs, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2721, as amended, Miller. Healing arts licensees: unprofessional conduct: *acupuncture licensees*.

(1) Existing law provides for the regulation of various enumerated healing arts professionals and specifies certain acts as constituting unprofessional conduct.

This bill would specifically provide that any person who is licensed, certified, registered, or otherwise regulated under those provisions and who engages in, or who aids or abets in, a violation of certain prostitution related crimes occurring in ~~a~~ the work ~~area~~ premises of, or the work area under the direct professional supervision or control of, that person is guilty of unprofessional conduct, and subject to disciplinary action

against his or her license. The bill would also provide for the imposition of a civil penalty that may be assessed and recovered in a civil action brought by any district attorney and, upon recovery, to be paid to the treasurer of the county in which the judgment was entered.

(2) The Acupuncture Licensure Act provides for the licensing and regulation of any person who practices acupuncture or holds himself or herself out as practicing or engaging in the practice of acupuncture and provides for the imposition of fees in connection with that licensure. The Acupuncture Committee of the Division of Licensing of the Medical Board of California is responsible for administering the act. Licensing fees are deposited in the Acupuncture Fund, which is continuously appropriated to carry out the provisions of the act.

This bill would require the licensing of any person desiring to operate a place of practice for acupuncture, as specified, and would require the payment of new licensing fees. This bill would also require all places of practice and all instruments, apparatus, and apparel used in connection with the practice of acupuncture or other associated techniques to be kept clean and sanitary pursuant to standards established by the board, and would provide for inspections by the committee.

The bill would also provide that unprofessional conduct includes the revocation, suspension, or other discipline, restriction, or limitation imposed by another state or an agency of the federal government on a license or certificate to practice acupuncture on grounds that would have been grounds for disciplinary action in California.

Because the bill would result in an increase of revenue to the Acupuncture Fund, it would thereby make an appropriation.

Vote: majority. Appropriation: ~~no~~—yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 731 is added to the Business and
- 2 Professions Code, to read:



731. (a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) for the first offense, and not to exceed five thousand dollars (\$5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

SEC. 2. Section 4950 is added to the Business and Professions Code, to read:

4950. (a) As used in this chapter, "place of practice" means any office or other location used for the practice of acupuncture or where the use of oriental massage, acupressure, breathing techniques, exercise, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health, are performed or prescribed in connection with the practice of acupuncture.

(b) All places of practice shall be licensed by the committee.

(c) This section shall not apply to any of the following:

(1) Facilities licensed by the State Department of Health Services.

(2) Licensed clinics as defined in Section 1204 of the Health and Safety Code.

1 (3) Licensed health facilities as defined in Section 1250
2 of the Health and Safety Code.

3 (4) Licensed community care facilities as defined in
4 Section 1502 of the Health and Safety Code.

5 (5) The home of a nonambulatory patient when a
6 physician or registered nurse has provided a written note
7 that the patient is unable to visit an acupuncture place of
8 practice.

9 SEC. 3. Section 4950.1 is added to the Business and
10 Professions Code, to read:

11 4950.1. (a) Any person desiring to operate a place of
12 practice shall make an application to the committee for
13 a license accompanied by the fee prescribed by this
14 chapter. The application shall be required whether the
15 person is operating a new place of practice or obtaining
16 ownership of an existing place of practice. The applicant,
17 if an individual, or each officer, director, and partner, if
18 the applicant is other than an individual, shall not have
19 committed acts or crimes that are grounds for denial of
20 licensure pursuant to Section 480.

21 (b) Every license application for a place of practice
22 shall identify the name of the responsible licensee
23 manager who is to be responsible for, and act on behalf
24 of, the registered place of practice. The responsible
25 licensee manager shall not have committed acts or crimes
26 that are grounds for denial of licensure pursuant to
27 Section 480.

28 Substitution of the responsible licensee manager may
29 be accomplished by application to the committee if the
30 following conditions are met:

31 (1) The person substituted shall not have committed
32 acts or crimes that are grounds for denial of licensure
33 pursuant to Section 480.

34 (2) No circumvention of the law is contemplated by
35 the substitution.

36 (c) A license issued pursuant to this section shall
37 authorize the operation of the place of practice only at the
38 location for which the license is issued. Operation of the
39 place of practice at any other location shall be unlawful
40 unless a license for the new location has been obtained.

1 (d) An application for renewal of the place of practice
2 license shall be made annually. The board may, as part of
3 the renewal process, make necessary inquiries of the
4 applicant and conduct an investigation in order to
5 determine if cause for disciplinary action exists.

6 SEC. 4. Section 4950.2 is added to the Business and
7 Professions Code, to read:

8 4950.2. The committee shall withhold, suspend, or
9 revoke the license of a place of practice under any of the
10 following circumstances:

11 (a) When the licensee manager set forth in the
12 application submitted in accordance with Section 4950.1
13 ceases to become responsible for management of the
14 registered premises and no substitution of the responsible
15 licensee manager has been made by application as
16 provided for in that section.

17 (b) When the licensee manager's license to practice
18 acupuncture has been revoked or suspended under
19 proceedings conducted in accordance with Chapter 5
20 (commencing with Section 11500) of Part 1 of Division 3
21 of Title 2 of the Government Code.

22 (c) When it has been adjudicated in an administrative
23 hearing that the licensee manager has failed to keep the
24 premises and equipment in a clean and sanitary
25 condition, in violation of Section 4950.3.

26 SEC. 5. Section 4950.3 is added to the Business and
27 Professions Code, to read:

28 4950.3. A place of practice and all equipment,
29 instruments, apparatus, apparel, and supplies used in
30 connection with the practice of acupuncture and
31 associated techniques shall be kept clean and sanitary at
32 all times, and shall conform to the minimum standards
33 established by the board.

34 SEC. 6. Section 4950.4 is added to the Business and
35 Professions Code, to read:

36 4950.4. A place of practice, including the equipment,
37 instruments, apparatus, apparel, and supplies located at
38 a place of practice or otherwise in the possession of an
39 acupuncturist for purposes of that practice, shall be open
40 to inspection by the committee, or its authorized

1 *representatives, during an inspection as part of a regular*
2 *inspection program by the committee, or during an*
3 *investigation initiated in response to a complaint that a*
4 *licensee has violated any law or regulation that*
5 *constitutes grounds for disciplinary action by the*
6 *committee.*

7 *SEC. 7. Section 4955 of the Business and Professions*
8 *Code is amended to read:*

9 4955. The committee may deny, suspend, or revoke,
10 or impose probationary conditions upon, the license of
11 any acupuncturist if he or she is guilty of unprofessional
12 conduct ~~which~~ *that* has endangered or is likely to
13 endanger the health, safety, or welfare of the public.

14 Unprofessional conduct shall include, *but not be*
15 *limited to*, the following:

16 (a) Securing a license by fraud or deceit.

17 (b) Committing a fraudulent or dishonest act as an
18 acupuncturist resulting in substantial injury to another.

19 (c) Using any controlled substance as defined in
20 Division 10 (commencing with Section 11000) of the
21 Health and Safety Code, or dangerous drug or alcoholic
22 beverage to an extent or in a manner dangerous to
23 himself or herself, or to any other person, or to the public,
24 and to an extent that the use impairs his or her ability to
25 engage in the practice of acupuncture with safety to the
26 public.

27 (d) Conviction of a crime substantially related to the
28 qualifications, functions, or duties of an acupuncturist, the
29 record of conviction being conclusive evidence thereof.

30 (e) Improper advertising.

31 (f) Violating or conspiring to violate the terms of this
32 chapter.

33 (g) Gross negligence.

34 (h) Repeated negligent acts.

35 (i) Incompetence.

36 (j) Except for good cause, the knowing failure to
37 protect patients by failing to follow infection control
38 guidelines of the committee, thereby risking transmission
39 of blood-borne infectious diseases from licensee to
40 patient, from patient to patient, and from patient to

1 licensee. In administering this subdivision, the committee
2 shall consider referencing the standards, regulations, and
3 guidelines of the State Department of Health Services
4 developed pursuant to Section 1250.11 of the Health and
5 Safety Code and the standards, regulations, and
6 guidelines pursuant to the California Occupational Safety
7 and Health Act of 1973 (Part 1 (commencing with Section
8 6300) of Division 5 of the Labor Code) for preventing the
9 transmission of HIV, hepatitis B, and other blood-borne
10 pathogens in health care settings. As necessary, the
11 committee shall consult with the Medical Board of
12 California, the California Board of Podiatric Medicine,
13 the Board of Dental Examiners of the State of California,
14 the Board of Registered Nursing, and the Board of
15 Vocational Nursing and Psychiatric Technicians, to
16 encourage appropriate consistency in the
17 implementation of this subdivision.

18 The committee shall seek to ensure that licensees are
19 informed of the responsibility of licensees and others to
20 follow infection control guidelines, and of the most recent
21 scientifically recognized safeguards for minimizing the
22 risk of transmission of blood-borne infectious diseases.

23 *(k) The revocation, suspension, or other discipline,*
24 *restriction, or limitation imposed by another state upon*
25 *a license or certificate to practice acupuncture issued by*
26 *that state, or the revocation, suspension, or restriction of*
27 *the authority to practice acupuncture by an agency of the*
28 *federal government, on grounds that would have been*
29 *grounds for disciplinary action in California of a licensee*
30 *under this chapter.*